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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/043,657	Applicant(s) SKILLERN, JEFF
	Examiner LESTER L. VANTERPOOL	Art Unit 3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 January 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 13,15-22,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 13,15-22,27,28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/136/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13, 15 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Strickland (U.S. Patent Number 4877128).

Strickland discloses the flexible pouch (10) including the plurality of layers (11, 12 & 17), wherein the plurality of layers (11, 12 & 17) are all permanently joined together to form an inner compartment (See internal area where (14) are stored in Figures 2 & 3) and at least one outer compartment (See area where (23) are stored in Figures 2 & 3), wherein the inner compartment (See internal area where (14) are stored in Figures 2 & 3) and the at least one outer compartment (See area where (23) are stored in Figures 2 & 3) share a common layer (See Figure 2), at least one outer compartment (See space where (23) are stored in Figures 2 & 3) being at least partially filled with the thermal capacitance medium (23), and the at least one inner compartment for being filled with the liquid for consumption (14) (See Figure 2).

Regarding claim 15, Strickland discloses the pouch is formed by the first bag surrounded at least partially by the second bag (See Figures 1 – 4).

Regarding claim 17, Strickland discloses the medium (23) consist of a cooling medium (See Column 4, lines 5 – 8).

3. Claims 13, 15, 19 & 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Duckhouse (European Patent Number GB 2 274 096 A).

Duckhouse discloses the flexible pouch including the plurality of layers (1, 3 & 5), wherein the plurality of layers (1, 3, & 5) are all permanently joined together to form an inner compartment and at least one outer compartment (See Abstract) (See Figure 1), wherein the inner compartment (See first chamber in Abstract) and the at least one outer compartment (See second chamber in Abstract) share a common layer (3), at least one outer compartment (See second chamber in Abstract) capable of at least being partially filled with thermal capacitance medium, and the at least one inner compartment (See first chamber in Abstract) for being filled with the liquid.

Regarding claim 15, Duckhouse discloses the pouch is formed by the first bag surrounded at least partially by the second bag (See Figure 1).

Regarding claim 19, Duckhouse discloses the conduit (19 & 21) having an inlet (9 & 11) and an outlet (See opposite end of 9 & 11 in Figure 1), the inlet (9) being in fluid communication with the inner compartment for drinking (See first chamber in Abstract).

Regarding claim 21, Duckhouse discloses the pack configured to receive the pouch and be wearable by the user (See Abstract).

4. Claims 13, 15 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Musielak (U.S. Patent Number 5007250).

Musielak discloses the flexible pouch (10) including the plurality of layers (See Figures 2 & 3), wherein the plurality of layers (See Figures 2 & 3) are all permanently joined together to form an inner compartment (22) and at least one outer compartment (40), wherein the inner compartment (22) and at least one outer compartment (40) share a common layer (See Figures 2 & 3), at least one outer compartment (40) being at least partially filled with a thermal capacitance medium (50) (See Column 3, lines 40 – 50), and the at least one inner compartment (22) being filled with the liquid (48) for consumption (See Column 3, lines 34 – 39) (See Figure5).

Regarding claim 15, Musielak discloses the pouch (10) is formed by the first bag surrounded at least partially by the second bag (See Figure 3).

Regarding claim 17, Musielak discloses the medium (50) consists of the cooling medium (See Column 3, lines 40 – 40).

5. Claim 13, 17, 19, 20, 21 & 27 & 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Motsenbocker (U.S. Patent Number 4420097).

Motsenbocker discloses the flexible pouch (14) including the plurality of layers (15 & 17), wherein the plurality of layers (15 & 17) are all permanently joined together (31 & 33) to form the inner compartment (See internal space of (14) in Figures 3 & 4) and at least one outer compartment (25), wherein, the inner compartment (See internal space of (14) in Figures 3 & 4) and the at least one outer compartment (See internal space of (25) in Figures 3 & 4) share a common layer (See bottom shared layers of (14 & 25) in Figures 3 & 4), the at least one outer compartment (See internal space of (25) in Figures 3 & 4) being at least partially filled with the thermal capacitance medium (27), and the at least one inner compartment (See internal space of (14) in Figures 3 & 4) for being filled with a liquid for consumption (See Figures 3 & 4).

Regarding claim 15, Motsenbocker discloses the pouch (14) is formed by the first bag surrounded at least partially by the second bag (See Column 3, lines 22 – 23) (See Figures 2 & 3).

Regarding claim 17, Motsenbocker discloses the medium (27) consists of a cooling medium (See Column 3, lines 23 & 24).

Regarding claim 19, Motsenbocker discloses conduit (16) having an inlet and an outlet (See Figures 2 & 5), the inlet (See Figure 2) being in fluid communication with the

inner compartment for drinking fluid (14) {(See Column 2, lines 67 – 68) & (See Column 3, lines 1 – 3)} (See Figure 2).

Regarding claim 20, Motsenbocker discloses the valve (18) at the conduit outlet (See Figures 2 & 5).

Regarding claim 21, Motsenbocker discloses the pack (12) configured to receive the pouch (14) and be wearable by the user {(See Column 2, lines 66 – 68) & (See Column 3, lines 55 – 68)} (See Figure 1).

Regarding claim 27, Motsenbocker discloses the medium (27) comprises the gel (See Column 3, lines 23 – 27).

Regarding claim 28, Motsenbocker discloses at least one outer compartment (See internal space of (25) in Figures 3 & 4) is formed on at least one side of the inner compartment (See internal space of (14) in Figures 3 & 4) (See Figures 3 & 4).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Motsenbocker (U.S. Patent Number 4420097) in view Boxer et al., (U.S. Patent Number 4526298).

However, Motsenbocker does not disclose the pouch is formed by a first sleeve surrounded at least partially by a second sleeve.

Boxer et al., teaches the pouch (78) is formed by the first sleeve (82) surrounded at least partially by the second sleeve (84) (See Figure 7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the pouch formed by the first sleeve surrounded at least partially by the second sleeve as taught by Boxer et al., with the hydration system of Motsenbocker in order to enhance insulation.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Motsenbocker (U.S. Patent Number 4420097) in view of Van Turnhout (U.S. Patent Number 6044201).

However, Motsenbocker does not disclose the medium consists of a heating medium.

Van Turnhout teaches the medium consists of a heating medium.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the medium consists of a heating medium as taught by Van Turnhout with the hydration system of Motsenbocker in order to keep beverages such as tea warm.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Motsenbocker (U.S. Patent Number 4420097).

Motsenbocker discloses the flexible pouch (14) including the plurality of layer (15 & 17), the plurality of layers (15 & 17) all being permanently joined together (31 & 33) to form an inner compartment (See internal space of (14) in Figures 3 & 4) and at least one outer compartment (See internal space of (25) in Figures 3 & 4), wherein the inner compartment (See internal space of (14) in Figures 3 & 4) and at least one outer compartment (See internal space of (25) in Figures 3 & 4) share a common layer (See bottom shared layers of (14 & 25) in Figures 3 & 4);

the conduit (16) having an inlet (See Figure 2) and an outlet (20); and pack (12) including the housing portion and strap (38) (See Column 2, lines 66 – 67),

wherein the inner compartment (See internal space of (14) in Figures 3 & 4) is for being filled with a drinking fluid,

wherein at least one outer compartment (See internal space of (25) in Figures 3 & 4) is at least partially filled with a thermal capacitance medium (27),

wherein the conduit inlet (See Figure 2) is in fluid communication with the compartment for drinking fluid (See Figure 2), and the outlet (See Figures 2 & 5) is capped by a valve (18), the valve (18) being a bit-valve (26) articulable by the jaws of a user,

wherein the drinking fluid compartment (14) is in fluid communication with a sealable opening (23) for filling the drinking fluid compartment, and

wherein the flexible pouch (14) is receivable within the housing portion of the pack (12) (See Column 2, lines 66 – 67).

However, Motsenbocker does not disclose straps.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make straps, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ.

Response to Arguments

10. Applicant's arguments filed January 10, 2008 have been fully considered but they are not persuasive.

11. Applicant argues, Strickland does not teach the flexible pouch including the plurality of layers, wherein the plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein the inner compartment and the at least one outer compartment share a common layer, at least one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption.

Furthermore, applicant argues, Strickland teaches there would be at least three walls separating any liquid contained within the baby bottle placed in the Strickland caddy from the cooling medium.

Examiner disagrees, Claim 13 recites: "wherein the inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption."

Strickland teaches the structural components that are recited in claim 13, such as: the flexible pouch (10); the inner compartment (See Internal Area where (14) are stored in Figures 2 & 3); the outer compartment (See Area where (23) are stored in Figures 2 & 3); the common layer (12); and the thermal capacitance medium (23).

The hydration system of Strickland is capable of storing the liquid in the inner compartment without the liquid being contained in a bottle, cup, glass, container or the like and the outer compartment is capable of storing (i.e. ice chips) without being stored in a bottle, cup, glass, container or the like. Moreover, there is no structure or limitation in claim 13 that limits the claim such that inserting a separate container with the thermal capacitance medium and liquid for consumption would not meet the limitations of claim 13.

Strickland satisfies all the structural limitations set forth in claim 13. Therefore, the rejection mailed on September 10, 2007 stands.

12. Applicant argues, Duckhouse does not teach the flexible pouch including the plurality of layers, wherein the plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein the inner compartment and the at least one outer compartment share a common layer, at least

one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption.

Furthermore, applicant argues, each internal chamber of the Duckhouse drinking bottle is specifically designed to be filled with the fluid for drinking and each internal chamber is provided with a separate deliver tube so that the liquid in each chamber can be independently consumed.

Examiner disagrees, Claim 13 recites: "wherein the inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption."

Duckhouse teaches the structural components that are recited in claim 13, such as: the flexible pouch (See Specification Page 5, lines 3 & 4); the inner compartment (Chamber between layers 1 & 3); the outer compartment (Chamber between layers 3 & 5); the common layer (3); and the thermal capacitance medium (i.e. hot or cold liquid, ice cubes or crushed ice) (See Specification Page 6, lines 7 – 10). The liquid for consumption can also be a thermal capacitance medium.

Furthermore, claim 19 recites: "a conduit having an inlet and an outlet, the inlet being in fluid communication with the inner compartment for drinking fluid."

Duckhouse teaches the conduit (19) having an inlet (9) and an outlet (i.e. opposite end of (19) in Figure 1), the inlet (9) being in fluid communication with the inner compartment (Chamber between layers 1 & 3) for drinking fluid.

Duckhouse satisfies all the structural limitations set forth in claim 13. Therefore, the rejection mailed on September 10, 2007 stands.

13. Applicant argues, Musielak does not teach the flexible pouch including the plurality of layers, wherein the plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein the inner compartment and the at least one outer compartment share a common layer, at least one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption.

Furthermore, applicant argues, there are at least three walls (representing at least six surfaces) separating any liquid contained within a can place in the Musielak cooling container from the cooling medium.

Examiner disagrees, Claim 13 recites: "wherein the inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption."

Musielak teaches the structural components that are recited in claim 13, such as: the flexible pouch (10); the inner compartment (22); the outer compartment (40); the common layer (See Internal Divider Material between 22 & 40 in Figures 2 &3); and the thermal capacitance medium (50).

The hydration system of Musielak is capable of storing liquid in the inner compartment without the liquid being contained in a bottle, cup, glass, container or the like and the outer compartment is capable of storing (i.e. ice chips) without being stored in a bottle, cup, glass, container or the like. Moreover, there is no structure or limitation in claim 13 that limits the claim such that inserting a separate container with the thermal capacitance medium and liquid for consumption would not meet the limitations of claim 13.

Musielak satisfies all the structural limitations set forth in claim 13. Therefore, the rejection mailed on September 10, 2007 stands.

14. Applicant argues, Motsenbocker does not teach the flexible pouch including the plurality of layers, wherein the plurality of layers are all permanently joined together to form an inner compartment and at least one outer compartment, wherein the inner compartment and the at least one outer compartment share a common layer, at least one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption.

Furthermore, applicant argues the compartment containing the freezable liquid is a completely sealed, separate compartment that is wholly housed within the liquid container.

In addition, the liquid stored in the container is free to move within portions of the container, wherein the liquid can move back and forth across the surfaces of the internal

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compartment and causing a direct heat transfer relationship being established whereby the liquid in the internal compartment cools the liquid in the container

Examiner disagrees, Claim 13 recites: "wherein the inner compartment and said at least one outer compartment share a common layer, said at least one outer compartment being at least partially filled with the thermal capacitance medium, and the at least one inner compartment for being filled with the liquid for consumption."

Motsenbocker teaches the structural components that are recited in claim 13, such as: the flexible pouch (14); the inner compartment (See Internal Space of (14) in Figures 3 & 4); the outer compartment (See Internal Space of (25) in Figures 3 & 4); the common layer (See Intersecting / Joint Shared Layers of (14 & 25) in Figures 3 & 4); and the thermal capacitance medium (27).

Claim 13 does not set forth that the liquid for consumption that is stored in the inner compartment and the thermal capacitance medium that is stored in the outer compartment is and or must be directly separated by the common layer.

Claim 13 recites, "wherein said inner compartment and said at least one outer compartment share a common layer".

Therefore, only the inner and outer compartments have to share a common layer and not the contents stored within of the inner and outer compartments.

In addition, the feature of the liquid moving back and forth across the surfaces of the internal compartment and causing a direct heat transfer relationship being established whereby the liquid in the internal compartment cools the liquid in the container has no merit on the structural limitations set forth in claim 13.

Motsenbocker satisfies all the structural limitations set forth in claim 13.

Therefore, the rejection mailed on September 10, 2007 stands.

15. Applicant argues, the combination of Motsenbocker in view of Boxer. Applicant states that Boxer does not teach or suggest the thermal capacitance medium in the at least one outer compartment.

Examiner disagrees, Motsenbocker teaches the structural components that are recited in claim 13, such as: the flexible pouch (14); the inner compartment (See Internal Space of (14) in Figures 3 & 4); the outer compartment (See Internal Space of (25) in Figures 3 & 4); the common layer (See Intersecting / Joint Shared Layers of (14 & 25) in Figures 3 & 4); and the thermal capacitance medium (27).

Motsenbocker was combined with Boxer to address the limitations set forth in claim 16. Motsenbocker did not disclose the first sleeve surrounding at least partially by the second sleeve.

Boxer teaches the pouch (78) formed by the first sleeve (82) surrounded at least partially by the second sleeve (84) (See Figure 7).

16. Applicant argues, the combination of Motsenbocker in view of Van Turnhout.

Applicant states, Van Turnhout teaches away from the hydration system, comprising "a flexible pouch including the plurality of layer all joined together to form an inner compartment and at least one outer compartment, the at least one outer compartment for being filled with the thermal capacitance medium".

Examiner disagrees, Motsenbocker teaches the structural components that are recited in claim 13, such as: the flexible pouch (14); the inner compartment (See Internal Space of (14) in Figures 3 & 4); the outer compartment (See Internal Space of (25) in Figures 3 & 4); the common layer (See Intersecting / Joint Shared Layers of (14 & 25) in Figures 3 & 4); and the thermal capacitance medium (27).

Motsenbocker was combined with Van Turnhout to address the limitations set forth in claim 18.

Motsenbocker discloses the thermal capacitance medium (27) being a freezable liquid (i.e. freezable water and or re-freezable liquids) being stored in outer compartment (25).

The re-freezable liquid of Motsenbocker is capable of being removed from the outer compartment and placed in a refrigerator freezer to be re-freezed. Furthermore, a heat pack or a re-heatable pad can be substituted and placed in the outer compartment of Motsenbocker to keep items stored hot or warm.

Therefore, the combination of Motsenbocker and Van Turnhout satisfies the structural limitations set forth in claim 18. Therefore, the rejection mailed on September 10, 2007 stands.

Conclusion.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lester L. Vanterpool/

Examiner, Art Unit 3782

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782